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Never Again: Correcting the Administrative Abandonment of Vietnam Veterans with other than Honorable Discharges Induced by Post-Traumatic Stress Disorder

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**“NEVER AGAIN”: CORRECTING THE ADMINISTRATIVE ABANDONMENT
OF VIETNAM VETERANS WITH OTHER THAN HONORABLE DISCHARGES
INDUCED BY POST-TRAUMATIC STRESS DISORDER**

Claire Voegele*

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I. INTRODUCTION

“Never again will one generation of veterans abandon another.”¹ This is the founding principle of the Vietnam Veterans of America (“VVA”), an advocacy group who estimates that 260,000 of the 8.7 million soldiers in the Vietnam War received “Other Than Honorable” administrative discharges for behavior symptomatic of undiagnosed Post Traumatic Stress Disorder

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1. VIET. VETERANS OF Am., <https://vva.org/who-we-are/about-us-history/> (last visited Oct. 30, 2016); see also Phillip Carter, *The Vets We Reject and Ignore*, N.Y. TIMES, Nov. 10, 2013 (“The American military ethos calls on all of us to leave no fallen comrade behind.”).

(“PTSD”).² While the consequences of a punitive discharge by court-martial are grave for a soldier, the Other Than Honorable characterization of an administrative discharge also cost these soldiers dearly.³ An Other Than Honorable discharge meant disqualification from disability benefits and medical treatment through the U.S. Department of Veterans Affairs (“VA”);⁴ these 260,000 veterans suffered essentially the same loss of benefits and healthcare as their counterparts who received punitive discharges.⁵ Veterans with “bad papers,” which are Other Than Honorable and Bad Conduct discharges, are generally ineligible for VA benefits such as education, housing, employment, pension, disability, burial benefits, and even healthcare in many cases.⁶

2. Rebecca Izzo, Comment, *In Need of Correction: How the Army Board for Correction of Military Records Is Failing Veterans with PTSD*, 123 YALE L.J. 1587, 1588 (2014) (citing Laura Keay & Kathryn Cahoy, *Veterans Discharge Upgrade Manual*, CONN. VETERANS LEGAL CTR. 9 (2011), <http://ctveteranslegal.org/wp-content/uploads/2012/12/Connecticut-Veterans-Legal-Center-Discharge-Upgrade-Manual-November-20111.pdf>) (explaining the types of discharges given to service members before the service members reached the end of their terms); *see also, e.g.*, WEBINAR: DISCHARGE UPGRADES, <http://yalelaw.mediacore.tv/media/veterans-legal-services-clinic-042415> (last visited Oct. 30, 2016) [hereinafter WEBINAR: DISCHARGE UPGRADES] (stating that approximately 26,000 bad-paper discharges were given to service members from the Vietnam-era); Complaint at 4, *Monk v. Mabus*, No. 3:14-cv-00260-WWE, 2014 WL 839871 (Conn. D.C. 2014) (alleging that during the Vietnam War Era, service members with undiagnosed PTSD were discharged under Other Than Honorable conditions).

3. *See, e.g.*, Stew Smith, *Military Justice 101 – Discharges*, THE BALANCE (Aug. 4, 2016), <https://www.thebalance.com/military-justice-101-part-iii-4056918> (explaining that punitive discharges are authorized punishments of courts-martial, but administrative separations are awarded administratively and are not punitive in nature and that Other Than Honorable discharge is awarded with costs to the receiving service members).

4. *See, e.g.*, *Other-Than-Honorable Discharges and Veterans’ Benefits*, BERRY LAW FIRM, (Feb. 23, 2014), <http://ptsdlawyers.com/honorable-discharges-veterans-benefits/> (explaining that many veterans are left without health care and disability benefits because some veterans received Other Than Honorable discharges barring them from receiving such benefits).

5. 38 C.F.R. § 3.12(b), (d) (2016); *see also, e.g.*, Izzo, *supra* note 2, at 1588 (explaining that veterans receiving “bad paper” discharges were barred from government assistance and were not eligible for a civil service job).

6. *See, e.g.* Izzo, *supra* note 2, at 1587 (describing an unnamed veteran who suffered from undiagnosed PTSD and was given an undesirable discharge. In addition, explaining that because of the discharge, the veteran could be denied for government employment, education benefits, disability benefits, health benefits, and military burial); *see also* Sundiata Sidibe & Francisco Unger, *Unfinished Business: Correcting “Bad Paper” for Veterans with PTSD*, VETERANS LEGAL SERVICES CLINIC (2015), <https://www.law.yale.edu/system/files/documents/pdf/unfinishedbusiness.pdf> (referencing UMAR MOULTA-ALI & SIDATH V. PANANGALA, CONG. RESEARCH SERV., R43928, *VETERANS’ BENEFITS: THE IMPACT OF MILITARY DISCHARGES ON BASIC ELIGIBILITY 2* (2015)).

Since its formation in 1930 by Congressional action, the VA has been responsible for providing disability benefits and medical treatment to veterans who suffer an injury or incur a disease during military service.⁷ Three requirements must be met to establish a service-connected, compensable injury: 1) an injury or event in the service, 2) a current medical condition, and 3) a medical nexus between the two.⁸ Rather than recognize the changed behavior in soldiers as manifestations of mental combat wounds, the U.S. military administratively abandoned thousands of service members for violent outbursts, drug use, absence without leave (“AWOL”), and other conduct attributable to the post-traumatic stress they developed during the Vietnam War.⁹ While many Other Than Honorable discharges issued during and after the War may be presumed justifiable, VVA estimates that more than 80,000 veterans could prove that they suffered from PTSD at the time of their discharge.¹⁰ Therefore, it is likely that a great number of these discharges were issued wrongfully.¹¹

PTSD was not a recognized disease until 1980; before then, the term “shell shock” was coined to describe the battle-related trauma experienced by soldiers in World War I.¹² About thirty percent of men and women who

7. See *Services*, U.S. DEP’T OF VETERANS AFFAIRS, <http://www.benefits.va.gov/benefits/services.asp> (last visited Jan. 10, 2016) (providing a brief overview of the services provided).

8. R.F. Stewart, III & Douglas I. Friedman, *Beyond the Veterans’ Benefit Known as “Aid and Attendance”*, 76 ALA. L. REV. 375, 375 (2015).

9. See, e.g., Izzo, *supra* note 2, at 1588, 1597 (describing how Veterans were discharged with Other Than Honorable Discharges, after they suffered from angry outbursts and for going absent without leave (“AWOL”), despite evidence of PTSD symptoms); see also, e.g., Complaint, *supra* note 2, at 7 (alleging that the VA has refused to put in place medically appropriate standards to ensure adequate consideration of PTSD when service members have applied to upgrade their Other Than Honorable Service discharges).

10. Complaint, *supra* note 2, at 137–38 (establishing that a veteran who suffered from undiagnosed PTSD at the time of discharge would demonstrate that the disease, not the man, was responsible for poor conduct such as “unauthorized absence without leave, shirking, using drugs, or lashing out at comrades or superior officers” that led to their discharge. Such behavior was symptomatic of PTSD not warranting the punishment of military separation).

11. Under current procedures, military branches would have conducted medical evaluations before discharging veterans. See, e.g., Instruction Number 1332.14: Enlisted Administrative Separations, U.S. DEP’T DEF. 8–9 (Jan. 27, 2014), <http://www.dtic.mil/whs/directives/corresp/pdf/133214p.pdf>.

12. See Carolina Alexander, *The Shock of War*, SMITHSONIAN MAG., Sept. 2010, <http://www.smithsonianmag.com/history/the-shock-of-war-55376701/?no-ist> (describing how soldiers’ emotional instability during war was compared to damage to their bodies from exploding military shells). Other terms for what is now called PTSD include “fits of cowardice,” “soldier’s heart” and “NYDN—Not Yet Diagnosed Nervous.” See *id.* (explaining that medical officers were instructed to avoid the term “shell shock,” but were instructed to use

serve in war zones experience PTSD.¹³ In Columbia, South Carolina, the PTSD specialty clinical team at Wm. Jennings Bryan Dorn VA Medical Center received between 600–700 referrals for PTSD treatment over the last year.¹⁴ Whether the U.S. military was unable to appreciate the magnitude of PTSD or lacked the resources to properly treat some 260,000 veterans for mental illness,¹⁵ the fact remains that the government shifted the burden of care onto service members when they were in their most vulnerable state.¹⁶ Rather than blame this system-wide discharge of Vietnam soldiers on a lack of a formal diagnosis for PTSD at the time, Congress should demand systematic review of discharge upgrades by Boards for Correction of Military Records (“BCMRs” or “the Boards”).¹⁷ Veterans have the right to petition the Boards for a discharge upgrade to gain access to disability benefits and medical treatment.¹⁸ Accordingly, these Boards are lawfully obligated to review the type and nature of military discharges brought before them in order to correct errors or remove injustices.¹⁹

However, over the past few decades, military records corrections boards have utterly failed to perform the functions Congress intended.²⁰ The Boards reject veterans’ requests to appear in-person for discharge upgrade hearings, fail to disclose information about their decision-making processes, and have “near-categorically” refused to correct discharge characterizations of veterans who present evidence of PTSD.²¹ Over the last fifteen years, 95%

the term “Not Yet Diagnosed Nervous” for probable PTSD cases; in addition, describing symptoms of PTSD cases as fear and pain in the soldier’s heart).

13. *Post-Traumatic Stress Disorder*, NEB. DEP’T. OF VETERANS AFFAIRS, <http://www.ptsd.ne.gov/what-is-ptsd.html> (last visited Jan. 23, 2016).

14. Interview with Elizabeth Codega, Licensed Med. Social Worker (LMSW), William Jennings Bryan Dorn VA Med. Ctr. (Nov. 9, 2015) [hereinafter Codega Interview].

15. Izzo, *supra* note 2, at 1588.

16. *See, e.g.*, Izzo, *supra* note 2, at 1589 (explaining that the military will not provide treatment to veterans with PTSD, despite their higher incidence of unemployment, homelessness, and violent behavior).

17. *See, e.g.*, Teresa Panepinto, *GOOD PAPER: Challenging the Narrative Reason for a Discharge Requires Considerable Patience—and Paperwork*, 35 L.A. LAW 43, 43–44 (2012) (explaining how veterans are not given medical retirement but put through continued specified reviews).

18. *See* 10 U.S.C. § 1553 (2012 & Supp. 2014) (providing the review of discharge or dismissal).

19. *See* 10 U.S.C. §§ 1552, 1553 (2012 & Supp. 2014) (providing the review of discharge or dismissal and procedure for the correction of military records).

20. *Van Bourg v. Nitze*, 388 F.2d 557, 563 (D.C. Cir. 1967) (“The function of the Review Board and the Correction Board is to review the type and nature of discharges in order to correct errors or remove injustices. And it is the duty of the judiciary to inquire into an allegedly wrongful and detrimental refusal to grant deserved relief.”).

21. Sidibe & Unger, *supra* note 6, at 1.

of applications from Vietnam veterans with Other Than Honorable discharges and PTSD claims have been denied.²² The Boards often deny petitions on the basis that a veteran’s military record contains no evidence that he suffered from or had been diagnosed with PTSD.²³ This begs the question of how a veteran could possibly have acquired the requisite diagnosis in the 1970’s when PTSD was not formally discovered until 1980.

In 2014, five Vietnam combat veterans and three veterans’ organizations representing thousands of similarly situated plaintiffs filed a lawsuit against the Secretaries of the Navy, Army and Air Force alleging that they could prove they suffered from PTSD at the time of their discharge.²⁴ The Secretaries of each military branch are empowered to act through the Boards “when necessary to correct error or remove injustice.”²⁵ However, the veterans of *Monk v. Mabus* alleged that the Boards failed to fairly consider their upgrade petitions, which presented evidence that their discharges were wrongful.²⁶ The outcome of that case, explored in more detail later, inspired this Note because the parties stumbled upon a number of administrative shortcomings inherent in the discharge upgrade process throughout the course of their litigation.²⁷

The military’s administrative abandonment of thousands of wrongfully discharged Vietnam veterans disqualifies a generation of mentally wounded soldiers from the disability benefits and medical treatment they otherwise earned through their service to this country.²⁸ This Note argues that shortcomings in the administration of discharge upgrade petitions worsen the chances for thousands of Vietnam veterans suffering from PTSD to obtain

22. *Id.*

23. See Complaint, *supra* note 2, at 19 (asserting that the Army Board for Correction of Military Records denied the plaintiff’s application for a discharge upgrade upon concluding that there was “no evidence which shows the applicant was diagnosed with PTSD or any other mental condition prior to discharge”).

24. *Id.* at 4.

25. *Id.* at 4–5.

26. *Id.* at 3.

27. The author of this Note was a Summer Fellow in the Veterans Legal Services Clinic at the Jerome N. Frank Legal Services Organization of Yale Law School in 2015 where she worked on various cases representing veterans’ legal needs. Students and supervising professors of the clinic had filed *Monk v. Mabus* in 2014 on behalf of their client Conley Monk and in collaboration with Vietnam Veterans of America, the National Veterans Council for Legal Redress, and Vietnam Veterans of America Connecticut State Council. The author’s clinical supervisor and Dean of Experiential Learning, Michael J. Wishnie, provided much direction for this Note and the author is very grateful for his input.

28. See Sidibe & Unger, *supra* note 6, at 1 (explaining that service members “with Other Than Honorable or Bad Conduct Discharges . . . are generally ineligible for education, housing, employment, disability, and burial benefits from the U.S. Department of Veterans Affairs (VA), and in many cases even healthcare”).

reparation for a decades-long transgression.²⁹ The ineffective and cumbersome process needs upgrading.³⁰ This Note proposes four administrative remedies: 1) personal hearings for BCMRs, 2) a shifted presumption for upgrade approval with presentation of PTSD diagnosis, 3) attorney's fees to promote veterans' access to the courts, and 4) utilization of existing Veterans Treatment Courts to share administrative burdens currently borne by the Boards alone.³¹

Part II of this Note provides an overview of the types of military discharges and the implications each may carry for a veteran. Part III explores the means and importance of timely diagnosing soldiers with PTSD. Part IV describes the obstacles to retroactive treatment of veterans suffering from PTSD. Part V sets forth the administrative avenues currently available to veterans seeking discharge upgrades for misconduct attributable to PTSD. Part VI highlights the current political and legal landscape facing veterans who are currently seeking discharge upgrades. Part VII proposes a series of remedies to correct identified administrative shortcomings and encourage eligible veterans to petition for discharge upgrades. Finally, Part VIII concludes with a brief foray into the steadily mounting nationwide interest in supporting veterans' needs.

II. IMPLICATIONS OF ADMINISTRATIVE & PUNITIVE MILITARY DISCHARGES

Most commonly, the military issues administrative discharges to soldiers upon completion of their service.³² The three types or "characters" of administrative discharges are Honorable ("HD"), General ("GD"), and Other than Honorable ("OTH"), the last of which is most relevant to the subject of this Note.³³ Approximately 260,000 Vietnam veterans received OTH discharges that may have been connected to PTSD.³⁴ Also, in some circumstances, soldiers can be separated from the military through issuance of a punitive discharge by a court martial, including Bad Conduct Discharge ("BCD"), Dishonorable Discharge ("DD"), and Dismissal (for officers only).³⁵ Veterans may additionally be separated from the military for a

29. *See infra* Part II.

30. *See infra* Part V, VI.

31. *See infra* Part VII.

32. Keay & Cahoy, *supra* note 2, at 6.

33. Richard J. Bednar, *Discharge and Dismissal as Punishment in the Armed Forces*, 16 MIL. L. REV. 1, 34 (1962); Keay & Cahoy, *supra* note 2, at 6.

34. Izzo, *supra* note 2, at 1588; *see also* Complaint, *supra* note 2, at 2 (examples of Vietnam veterans receiving OTH discharges that may have been connected to PTSD).

35. Bednar, *supra* note 33, at 6.

medical disability or a pre-existing personality disorder.³⁶ A service member discharged with a Personality Disorder (“PD”) or Adjustment Disorder (“AD”) is ineligible for disability pay through the Department of Defense (DOD) or for service-connected disability compensation from the VA because it is deemed a pre-existing condition.³⁷ However, a discharge on the basis of PTSD would qualify a service member for benefits and medical care; thus, the DOD would have a financial incentive to encourage clinical diagnosis of PD or AD instead of PTSD.³⁸ Since 2001, thousands of veterans have been discharged with a PD or an AD and cannot access disability benefits or healthcare.³⁹

36. See, e.g., Mary E. O’Leary, *Department of Defense Illegally Discharged Veterans for Having Personality Disorder, Yale Group Finds*, NEW HAVEN REGISTER (Mar. 22, 2012), <http://www.nhregister.com/general-news/20120322/departement-of-defense-illegally-discharged-veterans-for-having-personality-disorder-yale-group-finds-document-3> (finding people let go from military service for pre-existing personality disorders cannot access certain VA benefits); *Military Disability Retirement and Severance Pay*, STATESIDE LEGAL, <http://statesidelegal.org/military-disability-retirement-and-severance-pay> (last visited Mar. 30, 2016) (finding people let go from military service for medical disabilities have access to certain VA benefits).

37. See Todd C. Leroux, *U.S. Military Discharges and Pre-existing Personality Disorders: A Health Policy Review*, ADMIN. AND POLICY IN MENTAL HEALTH AND MENTAL HEALTH SERVS. RESEARCH (November 2015), at 749–51, <http://link.springer.com/article/10.1007/s10488-014-0611-z>. See generally VIET. VETERANS OF AM., <http://www.vva.org/ppd-faq.html> (last visited Oct. 30, 2016) (promoting and supporting a full range of issues important to Vietnam veterans).

38. Leroux, *supra* note 37, at 749–51. For more information on the differences between the military’s diagnostic procedural approaches to Personality Disorder, Adjustment Disorder and Post-Traumatic Stress Disorder, visit VIETNAM VETERANS OF AMERICA, <http://www.vva.org/ppd-faq.html> (last visited Oct. 30, 2016). The Department of Defense purports to rely upon the parameters set forth in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) for diagnosing mental illnesses; see also Mark Benjamin & Michael de Yoanna, *I Am Under a Lot of Pressure to Not Diagnose PTSD*, SALON (Apr. 8, 2009), <http://www.salon.com/2009/04/08/tape> (discussing the presence of incentives against diagnosing soldiers with PTSD).

39. See Vietnam Veterans of Am. Conn. Greater Hartford Chapter 120 v. U.S. Dep’t of Def., 10 F. Supp. 3d 245, 247 (D. Conn 2014). After numerous requests to the Department of Defense and Department of Homeland Security for military discharge records related to Personality Disorder discharges were ignored, Vietnam Veterans of America and other organizations filed suit under the Freedom of Information Act to compel the release of these discharge records. Advocates hoped that the litigation would prompt Congress to demand a systematic review of all PD and AD discharges to ensure these psychiatric diagnoses were properly administered; see also James Dao, *Branding a Soldier with “Personality Disorder”*, N.Y. TIMES, Feb. 24, 2012 (“Vietnam Veterans of America, an advocacy group, with help from the Yale veterans legal clinic, has sued the Defense Department seeking records they say will show that thousands of troops have been unfairly discharged for personality or adjustment disorder since 2001.”).

A veteran with an Other Than Honorable discharge encounters a wide variety of problems in his transition from military to civilian life that can be specifically tied to the stigmatization associated with the character of his discharge.⁴⁰ Most apparently, the Other Than Honorable discharge negatively impacts a veteran's employability, especially since nearly 90% of all service-members discharged receive Honorable discharges.⁴¹ Because military service is often a primary basis of a soldier's resume, the impact of a negative "recommendation" impacts a potential employer's consideration of the soldier's candidacy.⁴² A veteran's trouble in securing employment can spiral into an inability to obtain basic treatment for health issues and a general lack of resources.⁴³

Many veterans' organizations shun would-be members with Other Than Honorable discharges, further isolating these veterans and increasing their vulnerability to the symptoms of PTSD.⁴⁴ Coupled with the personal shame many soldiers feel over the Other Than Honorable discharge believing that it does not fairly reflect the quality of their service,⁴⁵ those veterans who suffer from PTSD are also more likely to fall into abuse of drugs or alcohol or engage in violent behavior.⁴⁶

Additionally, a soldier's character of discharge (honorable, general, or Other Than Honorable) affects the types of benefits that he can obtain from the VA. Benefits generally include VA medical care, disability

40. See Christopher H. Lunding, *Judicial Review of Military Administrative Discharges*, 83 YALE L.J. 33, 33–36 (1973) (discussing reasons why a veteran's OTH discharge can prove a disadvantage for securing civilian employment).

41. Cahoy & Keay, *supra* note 2, at 9 (citing DAVID F. ADDLESTONE, *MILITARY DISCHARGE UPGRADING, AND INTRODUCTION TO VETERANS ADMINISTRATION LAW: A PRACTICE MANUAL*, DUP81-1.2 n.6 (1990); see also Izzo, *supra* note 2, at 1588 (citing GERALD NICOSIA, *HOME TO WAR: A HISTORY OF THE VIETNAM VETERANS' MOVEMENT* 300 (2001) (noting that less than Honorable discharges have an adverse effect on a veteran's employment opportunities)).

42. Lunding, *supra* note 40, at 34 (citing Bradley K. Jones, *Gravity of Administrative Discharges: A Legal and Empirical Evaluation*, 59 MIL. L. REV. 1, 18 (1973)).

43. See Cahoy & Keay, *supra* note 2, at 9–10.

44. Izzo, *supra* note 2, at 1588 (citing L.P. Harvey, 'Bad Paper' Vets-America's Discarded Warriors, CHRISTIAN SCI. MONITOR, Nov. 10, 1986, <http://www.csmonitor.com/1986/1110/evets.html>).

45. Cahoy & Keay, *supra* note 2, at 9.

46. Miles E. McFall et al., *Combat-Related Posttraumatic Stress Disorder and Severity of Substance Abuse in Vietnam Veterans*, 53 J. STUD. ON ALCOHOL 357, 357 (1992) ("Vietnam-theater veterans with PTSD experienced more severe drug- and alcohol-abuse problems than did theater veterans without PTSD and were at greater risk for having both forms of substance abuse.").

compensation, education, home loans, and pension.⁴⁷ Service members who are separated for punitive reasons generally cannot qualify for any VA benefits.⁴⁸ While veterans with HD's or GD's typically receive most available types of benefits, veterans with an Other Than Honorable discharge are often caught in uncertain territory depending upon current VA benefits law.⁴⁹ Normally, a veteran with an Other Than Honorable discharge can receive VA medical care for disabilities incurred through service, which are deemed “service-connected” disabilities.⁵⁰ Thus, the significance of linking a current PTSD diagnosis to PTSD symptoms experienced during service is that PTSD becomes a service-connected, compensable disability.⁵¹ To receive any other types of benefits beyond medical treatment for disabilities incurred through service, a veteran with an Other Than Honorable discharge must receive a “favorable” character rating of discharge determination from the VA.⁵²

The VA conducts a wholly separate analysis from the BCMRs to determine its own character rating of a veteran's discharge.⁵³ However, any *favorable* decision by the BCMR to upgrade a veteran's character rating is *binding* on the VA.⁵⁴ Thus, veterans' advocacy groups recommend for veterans to pursue discharge upgrades from the BCMRs so that in the event of receiving a favorable determination from the BCMR, their application to the VA for benefits is automatically upgraded with a favorable character rating.⁵⁵ Unfortunately, decisions on disability claims from the VA take years to obtain, with the average appeal lasting nearly four years.⁵⁶

47. Keay & Cahoy, *supra* note 2, at 8.

48. 38 U.S.C. § 5303(e)(1) (2012).

49. 38 U.S.C. § 5303(e) (2012).

50. Margaret Wadsworth, *Can I Get Disability Benefits After an Other Than Honorable Discharge From the Military?*, NOLO, <http://www.disabilitysecrets.com/resources/disability/filing-disability/how-to-get-disability-benefits-after-discharge-from-mili> (last visited March 28, 2016).

51. *Id.*

52. See 38 U.S.C. § 5303 (2012).

53. See generally Wadsworth, *supra* note 50 (explaining that the VA will conduct its own case by case review).

54. Kathleen Gilberd, *Basics of Discharge Upgrading*, NLGMLTF.ORG (June 2014), <http://nlgmltf.org/military-law-library/publications/discharge-upgrades/>.

55. The author of this Note worked in the Jerome N. Frank Legal Services Organization of Yale Law School and determined this to be a strategy employed by attorneys there. See also Keay & Cahoy, *supra* note 2, at 8.

56. Sara Randazzo, *Veterans Fight for Power to Bring Class-Action Lawsuits*, WALL ST. J., Dec. 29, 2015. The U.S. Court of Appeals for the Federal Circuit is currently considering whether it will allow class actions in the Court of Appeals for Veterans Claims. The time delay is especially threatening for Vietnam-era veterans, most of whom are now elderly.

Meanwhile, veterans grow increasingly demoralized as they wait.⁵⁷ An extraordinary number of veterans die waiting.⁵⁸ In response, advocates have filed suit in the U.S. Court of Appeals for Veterans Claims for class action certification, in an effort to speed up the appeals process for similarly situated veterans.⁵⁹ Because the impact of an OTH discharge on a soldier's post-military life is so similar to that of a punitive discharge, it is all the more essential for veterans with PTSD to seek upgrades.⁶⁰ Furthermore, it is imperative that Congress insists upon a systematic and conscientious review of veterans' discharge upgrade applications when they present evidence of this enduring combat wound.

III. DIAGNOSING VIETNAM VETERANS WITH PTSD

Since 1980, medical research has continued to reveal the causes and symptoms of PTSD.⁶¹ At least thirty percent of Vietnam War veterans have suffered from PTSD, and it follows that those who carry Other Than Honorable discharges likely suffer from PTSD at even higher rates.⁶² Of the top six causes of homelessness among veterans, four can be linked to behavior symptomatic of PTSD.⁶³ Every night in the United States more than 300,000 veterans sleep on the streets or inside a homeless shelter,⁶⁴ and

57. *Id.*

58. See Amber Smith, *307,000 Veterans May Have Died While Waiting for VA Benefits. The VA Status Quo Must Change*, THE DAILY SIGNAL, Sept. 3, 2015, <http://dailysignal.com/2015/09/03/307000-veterans-may-have-died-while-waiting-for-va-benefits-the-va-status-quo-must-change/> (discussing a CNN report stating that roughly 800,000 records and applications were subjected to lengthy delay in the VA system for enrollment in healthcare benefit programs and that the Inspector General estimated that 307,000 veterans have died awaiting an answer to their petitions).

59. Randazzo, *supra* note 56.

60. See Keay & Cahoy, *supra* note 2, at 9–10 (discussing the stigma attached to any discharge other than an honorable discharge).

61. Izzo, *supra* note 2, at 1590 (“Over the last several decades, medical research has illuminated the causes and severe consequences of PTSD”).

62. Webinar: Discharge Upgrades, *supra* note 2.

63. *Fact Sheet: Veteran Homelessness*, NATIONAL ALLIANCE TO END HOMELESSNESS (April 22, 2015), <http://www.endhomelessness.org/library/entry/fact-sheet-veteran-homelessness> (stating that the causes of veteran homelessness are: (1) lack of income due to limited education and lack of transferable skills from military to civilian life; (2) combat-related physical health issues and disabilities; (3) combat-related mental health issues and disabilities; (4) substance abuse problems that interfere with job retention; (5) weak social networks due to problems adjusting to civilian life; and (6) lack of services).

64. *Homeless Veterans*, NATIONAL COALITION FOR THE HOMELESS (Sept. 2009), <http://www.nationalhomeless.org/factsheets/veterans.pdf>.

nearly half of all homeless veterans suffer from PTSD.⁶⁵ More Vietnam-era veterans are suffering from homelessness than the number of Americans who lost their lives during the Vietnam War.⁶⁶

Of the approximately 2.5 million Americans who served on the ground in Vietnam between 1961–75,⁶⁷ an estimated 271,000 of those veterans have received formal PTSD diagnoses today.⁶⁸ However, the VA estimates that the number of Vietnam veterans who have experienced PTSD at some point in their lifetime is double the number of veterans who have actually received a formal diagnosis.⁶⁹ The reason for the discrepancy: PTSD was not a recognized disease until 1980, *after* psychologist T.M. Keane and his associates conducted studies on Vietnam War veterans.⁷⁰

Thus, diagnosing PTSD in Vietnam veterans may be a retrospective undertaking, but contemporary data on the development of PTSD in soldiers currently serving can be used to connect retrospective diagnoses to a specific onset time.⁷¹ Evidence of how and when PTSD develops in active duty soldiers today is strikingly consistent with the recollections of Vietnam veterans.⁷² Recent medical research by psychiatrists at VU University Medical Center of Amsterdam on over 1,000 Dutch soldiers shows that those who deployed to Afghanistan experienced a “spike” in PTSD symptoms during the months immediately following their return from

65. Tori DeAngelis, *More PTSD Among Homeless Vets*, AMERICAN PSYCHOLOGY ASSOCIATION, Mar. 2013 (stating that two thirds of Iraq/Afghanistan homeless veterans have PTSD).

66. *Homeless Veterans*, *supra* note 64; see also U.S. NAT’L ARCHIVES AND RECS. ADMIN., <http://www.archives.gov/research/military/vietnam-war/casualty-statistics.html> (last visited Jan. 10, 2016) (showing 58,220 U.S. military fatal casualties of the Vietnam War).

67. Patrick S. Brady, *Not Dead Yet*, THE VVA VETERAN (Mar. 2011) http://digitaledition.qwinc.com/display_article.php?id=675095 (stating that Section 101(29) of the U.S. Code for Veterans offers two periods: 1) February 28, 1961 to May 7, 1975; and 2) August 5, 1964 to May 7, 1975).

68. Mandy Oaklander, *More Than 200,000 Vietnam Vets Still Have PTSD*, TIME (July 22, 2015), <http://time.com/3967590/vietnam-veterans-ptsd/>.

69. U.S. DEP’T OF VETERANS AFFAIRS, <http://www.ptsd.va.gov/public/PTSD-overview/basics/how-common-is-ptsd.asp> (last visited Jan. 10, 2016) (stating that Army medical doctors may be actively discouraged from diagnosing PTSD).

70. *Id.* (“In 1980, the American Psychiatric Association (APA) added PTSD to the third edition of its Diagnostic and Statistical Manual of Mental Disorders (DSM-III) nosologic classification scheme (2).”).

71. *Id.*

72. *Id.*

combat; these symptoms also recurred at one-year and five-year marks after returning from deployment.⁷³

Similarly, the named-plaintiff in *Monk v. Mabus*, the class action lawsuit that informed and inspired this Note, reported an onset of PTSD symptoms once he returned to base in Okinawa “only months after first enduring traumatic events” on the ground in Vietnam.⁷⁴ Each plaintiff named in *Monk v. Mabus* reported an onset of PTSD symptoms immediately upon returning to the United States.⁷⁵ VU University psychiatrists attribute delayed response to wartime stressors to the fact that connection to a military group may help soldiers cope; consequently, isolation can be problematic, especially since it is typical for someone with PTSD to attempt to escape triggers with drugs or by physically running away.⁷⁶ Every plaintiff in *Monk* reported going AWOL at some point before ultimately being discharged.⁷⁷ Finally, psychiatrists at VU University determined that soldiers who were younger than 21 when they deployed to Afghanistan experienced a greater increase in PTSD symptoms than older combat veterans at the one-year and five-year marks after returning home.⁷⁸ The average age of a soldier during the Vietnam War was 19.⁷⁹ All five named-plaintiffs in *Monk v. Mabus*, were between the ages of 17 and 20 when they enlisted to serve in the Vietnam War.⁸⁰ Under the U.S. military’s current procedures, each of these Vietnam veterans would have likely received a medical evaluation, a PTSD diagnosis, and a medical discharge in place of the OTH discharge they actually received.⁸¹ The recurrence of symptoms at the one-year and five-year marks established in this study further underline the compelling need to continue screening and mental health checks on soldiers well beyond deployment and their initial return.⁸²

Additionally, the Journal of the American Medical Association published a 2015 study by researchers from Utah State University and the University of Utah that illuminates an association between “a history of

73. Madeline Kennedy, *Veterans’ PTSD May Recur Down the Line*, BUSINESS INSIDER, Dec. 18, 2015, <http://www.businessinsider.com/r-veterans-ptsd-may-recur-down-the-line-2015-12>.

74. Complaint, *supra* note 2, at 10.

75. *Id.* at 9, 12, 15, 18.

76. Kennedy, *supra* note 73.

77. Complaint, *supra* note 2, at 6, 10–11, 13, 16.

78. Kennedy, *supra* note 73.

79. N.J. ST. COUNCIL VIET. VETERANS OF AM., INC., http://www.njscvva.org/vietnam_war_statistics.htm (last visited Jan. 10, 2016).

80. Complaint, *supra* note 2, at 5, 8, 15, 17.

81. *Id.* at 2–3.

82. See Kennedy, *supra* note 73.

military misconduct and subsequent homelessness among active duty US-military veterans who returned from Iraq and Afghanistan and were eligible for VHA benefits.”⁸³ The researchers considered nearly half a million records of active-duty soldiers deployed between October 2001 and December 2011 obtained from the Veterans Health Administration (VHA).⁸⁴ Significantly, the target group did not even include veterans discharged dishonorably since these veterans are not in VHA databases because they are ineligible for VHA services.⁸⁵ The study determined that while only 5.6% of the target group separated for misconduct, they represented 25.6% of homeless veterans at first VHA encounter, 28.1% within one year, and 20.6% within five years.⁸⁶ One of the leading causes of homelessness was found to be substance abuse that started during military service.⁸⁷ These findings further highlight the need to continue monitoring the mental health conditions of soldiers for years after returning from deployment.⁸⁸ As one author of the Utah research study observed, the opportunity to proactively change this cycle lies in the “critical transition between the Department of Defense and the VA.”⁸⁹

A National Vietnam Veterans Longitudinal Study has noted that “an important minority of Vietnam veterans [is] symptomatic after four decades, with more than twice as many deteriorating as improving.”⁹⁰ Rather than treating veterans’ mental combat wounds as they arose and developed, the military is now experiencing a backlog because the pool of applicants for benefits and discharge upgrades grows and veterans are older and sicker.⁹¹ Knowing that a significant portion of American troops currently serving in Iraq and Afghanistan, and any future wars, will return home with PTSD, evidence of the mental health effects of war on past veterans should be used

83. Adi V. Gundlapalli et al., *Military Misconduct and Homelessness Among US Veterans Separated From Active Duty, 2001-2012*, 314 J. AM. MED. ASS’N 832, 832 (2015).

84. *Id.*

85. *Id.*

86. *Id.*

87. Annie Knox, *Study: 1 in 4 Homeless Vets Was Discharged for Alcoholism, Other Misconduct*, SALT LAKE TRIB., Aug. 26, 2015, <http://www.sltrib.com/home/2880684-155/study-1-in-4-homeless-vets> (concluding that one in four homeless veterans were discharged for alcoholism and other misconduct).

88. *Id.*

89. *Id.*

90. Oaklander, *supra* note 68.

91. See Randazzo, *supra* note 56 (“The pool of applicants for benefits is getting bigger and sicker than ever.”).

to better prepare soldiers for combat, and could even prevent against the onset of PTSD symptoms.⁹²

IV. RETROACTIVE TREATMENT

Despite the drastic number of veterans suffering from mental illness like PTSD, the implementation of mental health data into the military landscape is not simple and resistance to it is attributable to multiple factors, including reluctance of veterans to seek help.⁹³ Furthermore, not only does the military espouse a countervailing “machoism,”⁹⁴ but American society as a whole has been slow to recognize and address mental illness generally.⁹⁵ The lack of an available medical diagnosis for PTSD until 1980 meant that potentially hundreds of thousands of veterans returning from Vietnam who were discharged due to erratic, violent, or rebellious behavior had no cause to seek treatment for PTSD or change the narrative reason for discharge on their records.⁹⁶

92. See generally Kennedy, *supra* note 73 (stressing the importance of early detection and continued monitoring to better understand and prevent PTSD in the future).

93. D.E. Ford, et al., *Blaming The Veteran: The Politics of Post-Traumatic Stress Disorder*, EPLURIBUS MEDIA (Feb. 11, 2006), http://www.epluribusmedia.org/features/20060206PTSD_intro.html (presenting points that offer an explanation for BCMRs’ resistance to properly process upgrade applications by using PTSD as an “excuse” because of a need to cut costs and showing that efforts are often made to portray troops as “psychologically impaired before they went to war, morally weak, or untruthful, malingering veterans”); see also Matthew J. Friedman, *History of PTSD in Veterans: Civil War to DSM-5*, U.S. DEP’T OF VETERANS AFFAIRS, <http://www.ptsd.va.gov/public/PTSD-overview/basics/history-of-ptsd-vets.asp> (last visited March 31, 2016) (describing how a claim of PTSD has been viewed throughout history).

94. Tom Bowman, *Congressional Tour of Aberdeen Finds Tangle of Claims, Complaints ‘Bad Apples’ and ‘Machoism’ Blamed for Scandal*, BALTIMORE SUN, Dec. 12, 1996.

95. Holly Seesel et al., *Consequences of Combat: A Review of Haunted by Combat: Understanding PTSD in War Veterans Including Women, Reservists, and Those Coming Back from Iraq; and Moving a Nation to Care: Post-Traumatic Stress Disorder and America’s Returning Troops*, 1 VETERANS L. REV. 254, 262 (2009) (citing AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 12 (4th ed. 2000)).

96. In 2014, Vietnam Veterans of America filed a class action lawsuit against the U.S. Department of Defense alleging that the military “systematically denied discharge upgrade applications based on claims of PTSD” and estimated that 250,000 Other Than Honorable discharges issued to Vietnam veterans may have been PTSD-related. Jim Tice, *Vietnam-era Soldiers Eligible for Discharge Upgrades*, ARMY TIMES, Dec. 1, 2014, <http://www.armytimes.com/story/military/careers/army/2014/12/01/ptsd-discharge-upgrades/19282091/>.

The insular nature of a military criminal proceeding leading up to a discharge further inhibits veterans from initially understanding the consequences of an Other Than Honorable characterization.⁹⁷ Some veterans regretfully report that they did not realize the benefits they would be giving up in accepting or not contesting their bad paper discharge because they simply wanted to get out and go home.⁹⁸ Most of the time, these soldiers were desperate to escape the military environment full of the triggers that caused their PTSD, but did not realize that they were suffering from the disease or that they would need treatment.⁹⁹ In addition, Vietnam veterans were met with little sympathy from the American public when soldiers returned home from the controversial twenty-year war.¹⁰⁰ In fact, veterans from other wars scorned initiatives like President Jimmy Carter’s special discharge review program for treating Vietnam vets differently.¹⁰¹ Moreover, public apathy and the notion that the Department of Veterans Affairs was simply “another government authority like the one that got them into the war” led many Vietnam veterans to distrust and avoid the VA.¹⁰²

In Columbia, South Carolina, the PTSD specialty clinical team at Wm. Jennings Bryan Dorn VA Medical Center received between 600–700 referrals for PTSD treatment over the last year.¹⁰³ However, Elizabeth Codega, LMSW, notes that some veterans with PTSD may not end up referred to her clinic because there is no requirement on community-based clinics or outpatient hospitals to do so.¹⁰⁴ Furthermore, usually, the only veterans who qualify for VA medical treatment have general or honorable

97. See, e.g., Complaint, *supra* note 2, at 36 (explaining that “depressed, symptomatic with PTSD, and suffering from opiate withdrawal, Mr. Monk did not have the capacity to understand the long-term consequences of executing his discharge papers. Instead, he simply signed them.”).

98. *Id.* at 36.

99. *Id.* at 35–36.

100. Lee Lescaze, *Upgrading Discharges Chills '40s Vets*, WASH. POST, June 21, 1977.

101. *Id.*

102. *VA Survey Discovers Vets “Distrust” VA*, 7 THE VETERAN: VIETNAM VETERANS AGAINST THE WAR 1, 6 (Summer 1977), <http://www.vvaw.org/pdf/v7n4.pdf>. Even today, veterans of more recent wars harbor a general distrust of the U.S. Department of Veterans Affairs (VA), due to their infamous backlog of claims. VA figures show that only about 55% of eligible veterans seek care at the VA. See *Hundreds of Thousands Spurn Free Benefits*, NBC NEWS (Jan. 23, 2013), http://usnews.nbcnews.com/_news/2013/01/23/16629681-hundreds-of-thousands-of-veterans-spurn-free-benefits?lite (explaining this statistic).

103. Interview with Elizabeth Codega, *supra* note 14.

104. *Id.*

discharges.¹⁰⁵ Thus, veterans with Other Than Honorable discharges fall through the cracks.¹⁰⁶

At the Ralph H. Johnson VA Medical Center in Charleston, South Carolina, clinician Carol Denier, PhD, of the PTSD Clinical Specialty Team has also never received a referral for a veteran with less than a general discharge.¹⁰⁷ She confirms that the surge in mental health treatment for Vietnam veterans was delayed for many reasons, including a lack of trust in the VA harbored within the veteran community.¹⁰⁸ Also, she observed that many Vietnam veterans started seeking treatment for PTSD symptoms once they reached retirement age because the lack of routine in their lives left room for the symptoms of the disease to reemerge.¹⁰⁹ Thus, ten years ago, Denier estimates that 80-90% of veterans treated in her specialty clinic were from the Vietnam-era.¹¹⁰ Five years ago, half of her patients were Vietnam-era, but today only about 20% of her patients are Vietnam veterans.¹¹¹ She notes that the numbers are dropping off now due to normal population trends and the influx of veterans from new theaters like Iraq and Afghanistan.¹¹²

V. ADMINISTRATIVE AVENUES CURRENTLY AVAILABLE

Veterans who wish to pursue a discharge upgrade must begin with an application to one of two administrative boards: a Discharge Review Board (“DRB”) or a Board for Correction of Military Records (“BCMR”).¹¹³ Each branch of the military has its own exclusive DRB and BCMR—Army, Air Force, Navy (handles Navy and Marine Corps), and Coast Guard.¹¹⁴ Most Vietnam-era veterans are forced to deal exclusively with their BCMR because a fifteen-year Statute of Limitations from date of discharge exists to

105. Telephone interview with Carol Denier, PhD., and Ralph H. Johnson, VA Med. Ctr. (Nov. 9, 2015) (discussing that one positive difference to note is that while veterans must meet certain eligibility requirements to seek treatment for most VA medical services, veterans reporting cases of and seeking treatment for Military Sexual Trauma do not need to meet any requirements).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* Ms. Denier acknowledged that some Vietnam veterans mentioned that they felt guilty taking up her time knowing that younger Iraq/Afghanistan veterans needed treatment for PTSD as well.

113. Lunding, *supra* note 40, at 68.

114. Keay & Cahoy, *supra* note 2, at 10.

time-bar them from the DRBs.¹¹⁵ Regulations require that BCMR members be high-ranking civilians in the executive part of their military branch.¹¹⁶ Each BCMR holds more extensive authority than their DRB counterparts, in that the Secretary of a military department may adjust any military record of the Secretary's when the Secretary considers it necessary to correct an error or remove an injustice.¹¹⁷ However, veterans do not have a right to an in-person hearing in front of a BCMR and BCMRs almost never grant veterans' requests for personal appearances.¹¹⁸ Therefore, in comparison to the DRB process, which does afford a veteran the right to a personal appearance during his hearing,¹¹⁹ an applicant is limited by what he is able to compile in his form application.¹²⁰ Since a BCMR may refuse to reconsider an application if it appears to offer no new “material” evidence,¹²¹ the likelihood that a veteran's application will be overlooked increases.¹²²

Whenever these Boards are presented with the opportunity to correct a service member's record, such as upgrading the characterization of a discharge,¹²³ and doing so would be “necessary to correct an error or remove an injustice,” the Boards have Congress' authority to do so.¹²⁴ Yet, when a group of veterans presenting new evidence is systematically denied in the manner that Boards have denied veterans with PTSD claims over the past

115. *Id.*

116. *Id.* at 18.

117. 10 U.S.C. § 1552(a)(1) (2012).

118. Panepinto, *supra* note 17, at 46.

119. *See* 10 U.S.C. § 1553(c) (2014) (indicating that a person may appear before the board in person or by counsel or an accredited representative); Discharge Review Standards, 32 C.F.R. § 70.9 (2015) (generally describing the DRB review process, which can include a hearing and further stating that the DRB “shall give full, fair, and impartial considerations to all applicable factors before reaching a decision”).

120. *See* Keay & Cahoy, *supra* note 2, at 19 (citing THE ARMY BOARD FOR CORRECTION OF MILITARY RECORDS, <http://arba.army.pentagon.mil/abcmr-overview.cfm> (last visited March 29, 2016) (explaining the several stages of review)).

121. Army Board for Correction of Military Records, 32 C.F.R. § 581.3(e)(1)(iv) (2015).

122. *See generally* Panepinto, *supra* note 17, at 46–47 (the author notes that discharge upgrade applications should be supported with character statements, current medical records if applicable, evidence of post-service accomplishments, relevant news stories and a personal statement from the veteran).

123. *Yee v. United States*, 512 F.2d 1383, 1387 (Ct. Cl. 1975) (explaining that the BCMR has “the power, and the duty, to remove injustices and correct errors in servicemen's records”).

124. 10 U.S.C. § 1552(a)(1) (2012).

two decades, it is doubtful that these administrative bodies are still functioning as Congress intended.¹²⁵

Federal court is an available remedy for a veteran seeking a discharge upgrade or a correction of a military record only if all administrative remedies have been exhausted first.¹²⁶ Veterans may appeal a Board's decision in federal court under the Administrative Procedure Act, subject to a six-year statute of limitations from the date of the issuance of the board's decision.¹²⁷ Venues available to the veteran include the district where the veteran was discharged, the district where he resides, or Washington, D.C.¹²⁸ However, the longer an appeals process takes, the less likely it is that a veteran will be persistent with his claim or stay organized, especially when the veteran has not retained counsel.¹²⁹

VI. UPGRADING VIETNAM VETERANS THAT THE MILITARY LEFT BEHIND

A veteran with an Other Than Honorable discharge must obtain an upgrade to general or honorable from a Board for Correction of Military Records before he may access disability benefits or VA medical care.¹³⁰ Historically, BCMRs grant upgrades about 30% of the time, but over the last two decades, the Boards upgraded fewer than 5% of petitions submitted by Vietnam veterans with PTSD claims.¹³¹ Thus, on March 3, 2014, five Vietnam combat veterans and three veterans organizations jointly filed *Monk v. Mabus*, the aforementioned class-action lawsuit, seeking relief for tens of thousands of similarly situated veterans who developed PTSD and were subsequently discharged with an Other Than Honorable characterization.¹³²

Later that year, on September 3, 2014, the U.S. Secretary of Defense, Chuck Hagel, issued a memo ("the Memo") to the Department of Defense

125. See *Yee v. United States*, 512 F.2d at 1387 (explaining that the BCMR is supposed to "remove injustices and correct errors in servicemen's records," which is not what is happening if these veterans are being denied their claims).

126. Keay & Cahoy, *supra* note 2, at 16.

127. 28 U.S.C. § 2401(a) (2012).

128. Keay & Cahoy, *supra* note 2, at 26.

129. *Id.* at 27.

130. WEBINAR: DISCHARGE UPGRADES, *supra* note 2.

131. *Id.*

132. Dave Philipps, *New Rules May Allow Benefits Long Denied to Vietnam-Era Veterans*, N.Y. TIMES, Sept. 3, 2014; see also *Monk v. Mabus*, YALE LAW SCHOOL, <https://www.law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/veterans-legal-services-clinic/monk-v-mabus/case-filings> (last visited Jan. 10, 2016). The named plaintiffs are James Cottam, James Davis, Kevin Marret, Conley Monk, George Siders, National Veterans Council for Legal Redress, Vietnam Veterans of America, and Vietnam Veterans of America Connecticut State Council.

(“DOD”) that addressed petitions for discharge upgrades made by veterans with Other Than Honorable discharges claiming to suffer from PTSD.¹³³ The Secretary’s Memo provided guidance to “mandate[] liberal waiver of time limits, ensure[] timely consideration of petitions, and allow[] for increased involvement of medical personnel in Board determinations.”¹³⁴ The Memo instructed the Boards for Correction of Military Records (“BCMRs”) for all branches to give “liberal consideration” to veterans’ petitions for “changes in [the] characterization of service” noted on their discharge papers.¹³⁵

Thus, for the first time since the Vietnam War, a specific and knowable group of veterans discharged under an Other Than Honorable characterization who exhibited symptoms of PTSD during and after their service, but prior to the 1980 diagnosis, has come into focus for the DOD.¹³⁶ More than fifty years since the start of the Vietnam War, the Secretary of Defense, through the Memo, has finally promulgated policy that has the potential to counter the impact that PTSD has had on the lives of these Vietnam and other veterans with Other Than Honorable discharges.¹³⁷ In response to this policy, on November 14, 2014, Judge Warren Eginton of the United States District Court for the District of Connecticut presiding over *Monk v. Mabius* remanded the five individual plaintiffs’ claims to the Boards and dismissed the organizational plaintiffs’ claims without prejudice.¹³⁸ Eventually, all five individual plaintiffs’ upgrade petitions were approved in June of 2015 and the organizational plaintiffs’ motion for class certification may still be pursued.¹³⁹

133. Memorandum from Chuck Hagel, Sec’y of Def., Memorandum for Secretaries of the Military Departments: Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge on Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder (Sept. 3, 2014), <http://arba.army.pentagon.mil/documents/SECDEF%20Guidance%20to%20BCMRs%20re%20Vets%20Claiming%20PTSD.pdf> (likely issued in response to the combination of ongoing litigation and pressure from Senator Blumenthal and other politicians in Washington, D.C. advocating for veterans’ issues).

134. *Id.*

135. *Id.*

136. *See generally id.* (calling on all BCMRs for all branches to give “liberal consideration” to veterans’ petitions for changes in the characterization of service noted on their discharge papers).

137. Sidibe & Unger, *supra* note 6, at 2 (finding over the past year following the Memo’s promulgation, from 2014 to 2015, the Army BCMR grant rate for Vietnam veterans with PTSD-based upgrade petitions increased to an extraordinary 59%).

138. Order on Motion for a Voluntary Remand, *Monk*, 2014 WL at 839871.

139. Peggy McCarthy, *Vietnam Veterans Are Declared Eligible To Receive Long-Denied Benefits*, VETERANS HEALTH, June 22, 2015, <http://c-hit.org/2015/06/22/vietnam-veterans-are-declared-eligible-to-receive-long-denied-benefits/>.

While *Monk v. Mabus* is an important victory, in order to demonstrate that the U.S. government will take care of future veterans and fulfill its duty to all who have served, the DOD must actively reform administrative processes to ensure implementation of the Secretary's directive for "liberal consideration" of *all* these veterans' petitions for discharge upgrades.¹⁴⁰ In December 2014 and June 2015, Vietnam Veterans of America and the National Veterans Council for Legal Redress, two of the three organizational plaintiffs in *Monk v. Mabus*, requested records from the DOD to monitor implementation of the Secretary's policy guidelines over the previous year, but their requests were ignored.¹⁴¹ After the plaintiffs filed suit under the Freedom of Information Act, the Army delivered records but the Navy and the Air Force were barely responsive. Law students in the Veterans Legal Services Clinic in the Jerome N. Frank Legal Services Organization at Yale Law School recently reported their findings based primarily upon documentation provided by the Army.¹⁴²

The findings are inspiring and suggest that Secretary Hagel's PTSD Upgrade Memo had an enormous impact.¹⁴³ From 1998 to 2013, the Army BCMR grant rate for Vietnam veterans with PTSD claims was 4.6%.¹⁴⁴ Over the past year following the Memo's promulgation, from 2014 to 2015, the Army BCMR grant rate for Vietnam veterans with PTSD-based upgrade petitions increased to an extraordinary 59%.¹⁴⁵ Still, thousands of eligible veterans have not submitted discharge upgrade applications—the fight is far from over.¹⁴⁶ To promote eligible veterans' applications and to continue to correct these administrative shortcomings, this Note offers four remedies.

VII. PROPOSED ADMINISTRATIVE REMEDIES

A. *Personal Hearings for BCMRs*

First, the BCMRs should emulate the lower Decision Review Boards ("DRBs") and allow for personal hearings to accompany PTSD claims with

140. Sidibe & Unger, *supra* note 6, at 2.

141. *Id.*

142. *Id.* at 5.

143. *Id.*

144. *Id.* (citations omitted).

145. *Id.* at 2.

146. See Peggy McCarthy, *Veterans Are Not Applying For Discharge Status Upgrades, Pentagon Blamed*, HARTFORD COURANT, Nov. 2, 2015, <http://www.courant.com/health/hc-discharge-status-upgrades-20151102-story.html> (discussing the lack of veteran applications for discharge upgrades because of the lack of publicity for such options).

discharge upgrade requests in place of pro forma applications, which deny petitioners’ their procedural due process right to be heard. Currently, BCMRs deny most requests for personal hearings for discharge upgrade requests and no traveling courts exist—all BCMRs are located in Washington, D.C.¹⁴⁷ The lack of personal accessibility to BCMRs is a feature particular to the discharge upgrade process administered by the military branches’ record correction boards.¹⁴⁸

When the VA denies a benefits claim, the veteran may appeal to the requisite VA Regional Office and then, if necessary, to the Board of Veterans’ Appeals (“BVA”) in Washington, D.C.¹⁴⁹ While the BVA conducts most hearings by video, members of the board also travel to regional offices throughout the year to conduct scheduled in-person hearings.¹⁵⁰ If the BVA also denies the claim, the veteran may appeal to the Court of Appeals for Veterans’ Claims and finally to the Federal Circuit Court of Appeals.¹⁵¹

Personal hearings are effective in the discharge upgrade process, as evidenced by Air Force DRB data gathered by Kathleen Gilberd in her 2008 practitioner’s guide for discharge upgrades.¹⁵² Gilberd assessed that under Air Force DRB documentary review, pro forma applicants had a 15% upgrade success rate, while personal appearance applicants received upgrades 45% of the time.¹⁵³

Finally, the right to be heard is a fundamental rule of civil procedure and a constitutionally derived right that protects a litigant’s substantive rights.¹⁵⁴

147. Panepinto, *supra* note 17, at 46.

148. *Id.*

149. Stewart & Friedman, *supra* note 8, at 376.

150. *Id.*

151. *Id.*

152. See KATHLEEN GILBERD, UPGRADING LESS-THAN-FULLY-HONORABLE DISCHARGES, THE AMERICAN VETERANS AND SERVICEMEMBERS SURVIVAL GUIDE 324 (2008) (Air Force DRB documentary review applicants have a 15% success rate, while personal appearance applicants have a 45% success rate.); see also Panepinto, *supra* note 17, at 44 (explaining that personal appearance hearings generally encounter greater success than documentary review alone).

153. See Gilberd, *supra* note 152, at 324 (noting the Air Force discharge upgrade application success rate, both for those who have personal appearances and those whom do not); see also Panepinto, *supra* note 17, at 44 (citing Gilberd, *supra* note 152, at 324) (showing that personal appearance applicants have a higher success rate than those that have documentary review). This can be analogized to the common understanding that one is perhaps more likely to get his fine reduced or even waived in traffic court for a speeding ticket if he appears personally in front of the judge.

154. *Due Process and Equal Protection*, NATIONAL TRUST FOR HISTORIC PRESERVATION, <http://www.preservationnation.org/information-center/law-and-policy/legal->

The Model Code of Judicial Conduct also recognizes a duty to ensure a litigant's right to be heard.¹⁵⁵ Furthermore, the Board of Veterans Appeals recognizes a duty to afford litigants an opportunity to be heard.¹⁵⁶ The success rate of litigants in front of DRBs who take advantage of the right to a personal hearing vastly exceeds the success rate of those veterans who do not appear in front of the DRB.¹⁵⁷ Thus, the United States Code should be amended to require BCMRs to grant personal hearings to veterans who request them.

B. Presumption for Upgrade Approval with Presentation of PTSD Diagnosis

Second, the BCMRs should replace the presumption of “regularity in the conduct of governmental affairs” with a rebuttable presumption for upgrade approval for veterans with OTH discharges who present evidence of a PTSD diagnosis in order to improve the efficiency and speed with which the BCMRs process veterans’ claims.¹⁵⁸ Similar to the rational basis threshold in challenging the constitutionality of a law, the veteran seeking a discharge upgrade must overcome the evidentiary presumption that the military’s discharge was reasonable.¹⁵⁹ Even after a veteran has submitted medical evidence of PTSD in a subsequent appeal of a BCMRs decision, the policy of the board is still to deny that a lack of PTSD diagnosis at the time of discharge was incorrect in spite of the fact that it was medically impossible to have any such diagnosis before 1980.¹⁶⁰ The proposed presumption would flip the burden to the government such that a veteran presenting evidence of PTSD and requesting an upgrade to his OTH discharge would be presumed worthy of approval absent any countervailing evidence the government may

[resources/preservation-law-101/constitutional-issues/due-process-and-equal-protection.html](https://scholarcommons.sc.edu/sclr/vol68/iss2/5) (last visited March 31, 2016).

155. Model Code of Judicial Conduct r. 2.6 (Am. Bar Ass’n 2010).

156. 38 U.S.C. § 7107(3)(b) (1998) (“[T]he Board shall decide any appeal only after affording the appellant an opportunity for a hearing.”).

157. See Gilberd, *supra* note 152 at 324 (discussing how veterans with personal hearings have higher success rates with these claims than those that do not); see also Panepinto, *supra* note 17, at 44 (citing Gilberd, *supra* note 152, at 324) (stating that claims that have personal hearings are often more successful than claims that have only documentary review).

158. 32 C.F.R. § 724.211 (2015).

159. Panepinto, *supra* note 17, at 46 (citations omitted).

160. See Izzo, *supra* note 2, at 1596 (further explaining cases in which the BCMRs have denied applicants’ requests for discharge upgrades solely because of the “lack of a PTSD diagnosis” in the veteran’s record at the time of discharge or refuse to consider evidence of an incorrect initial diagnosis).

present.¹⁶¹ The burdens associated with the pursuit of a discharge upgrade including acquisition of documents, procurement of medical records and diagnoses, waiting time, and psychological persistence are weighty enough for a veteran to bear.¹⁶² A special presumption to shift at least one aspect of an aging Vietnam veteran’s burden of persuasion should be instituted in the interest of equity.¹⁶³

C. Attorney’s Fees

Third, courts and policymakers should encourage the awarding of attorney’s fees in litigation of veterans’ claims to promote veterans’ access to legal redress and the Department of Defense’s efficient administration of claims. Attorney’s fees are critical to the American legal system in preserving access to courts for the poor, underprivileged and underrepresented members of society.¹⁶⁴ In fact, many legal aid organizations depend upon the collection of attorney’s fees to keep their doors open and “numerous federal laws protecting rights to housing, health care, and other necessities would remain unenforced” without the financial incentive for enforcement.¹⁶⁵ Fee-shifting encourages lawyers to take cases where an attorney’s expertise is necessary but the only damages collectible are the actual benefits sought for the client or contract enforcement against the government.¹⁶⁶ Thus, the tool not only promotes access to the courts and motivates lawyers to take “no-money” cases, but fee-shifting statutes work

161. Rational basis review obligates the government to demonstrate a mere legitimate interest to withstand judicial scrutiny. *U.S. v. Navarro*, 800 F.3d 1104, 1113 (9th Cir. 2015) (citing *United States v. Ruiz-Chairez*, 493 F.3d 1089, 1091 (9th Cir. 2007)). The proposed presumption remedy was also recently mentioned by Yale Law students in the report “Unfinished Business,” which they prepared on behalf of Vietnam Veterans of America and the National Veterans Council for Legal Redress. It is such an important suggestion that it warrants repeated recommendation. *See* Sidibe & Unger, *supra* note 6, at 9 (indicating the need for a presumption of record correction for veterans with documented PTSD).

162. Sidibe & Unger, *supra* note 6, at 9.

163. *See id.* (showing the burdens associated with the pursuit of a discharge upgrade and how they affect the outcome of the claim).

164. *See generally* 42 U.S.C. § 1988 (2000) (citations omitted) (allowing for reasonable attorney’s fees); 28 U.S.C. § 2412(d)(1)(A) (2011) (allowing for a prevailing party to seek repayment of certain fees).

165. FEDERAL PRACTICE MANUAL FOR LEGAL AID ATTORNEYS § 9.4 (2013) (updated by Richard Rothschild), <http://federalpracticemannual.org/node/54>.

166. *See, e.g.*, Alan Hirsh & Diane Sheehey, Fed. Jud. Ctr., Awarding Attorneys’ Fees and Managing Fee Litigation (2005), [http://www.fjc.gov/public/pdf.nsf/lookup/attyfees.pdf/\\$File/attyfees.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/attyfees.pdf/$File/attyfees.pdf) (last visited Nov. 11, 2016) (stating all the ways an attorney may be able to obtain attorneys’ fees which in turn may encourage attorneys to take a case).

to deter illegal or inappropriate government conduct.¹⁶⁷ Other policy reasoning behind attorneys' fees awards is that they encourage private litigation to implement public policy and level the playing field between individual plaintiffs and government or corporate defendants.¹⁶⁸

Nearly two hundred civil statutes in federal courts authorize attorneys' fees awards to the prevailing party—some even make them available to a prevailing defendant.¹⁶⁹ In *Buckhannon v. West Virginia Department of Health & Human Resources*, the Supreme Court established the requisite qualifications under most federal fee-shifting statutes for a fee award to the “prevailing party.”¹⁷⁰ To be considered a prevailing party, a plaintiff need not win any specific number or weight of issues, but rather, a plaintiff prevails if “one [] has succeeded on any significant claim affording it some of the relief sought.”¹⁷¹

The second prong requires that the victory take a certain form, but case law does not provide a completely clear answer to what type of form is sufficient, short of a winning judgment.¹⁷² If the result awarded “materially alter[s] the legal relationship between the parties,”¹⁷³ such as an injunction or declaratory judgment, the legal relationship is probably materially altered.¹⁷⁴ *Buckhannon* preempted the catalyst theory, which plaintiffs used in Freedom of Information Act cases to argue that they had substantially prevailed if the defendant voluntarily or unilaterally changed its non-compliant position after the filing of a lawsuit.¹⁷⁵ However, in 2007, Congress promulgated a “*Buckhannon* fix” in its Open Government Act, clarifying that “a complainant has substantially prevailed in a FOIA lawsuit, and is eligible to recover attorney fees, if . . . the pursuit of a claim was the catalyst for the voluntary or unilateral change in position by the opposing party.”¹⁷⁶

167. *Id.* at 2.

168. Cong. Research Serv., *Awards of Attorneys' Fees by Federal Courts and Federal Agencies* ii (2008).

169. Hirsh & Sheehey, *supra* note 166, at 1.

170. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603 (2001).

171. *Id.* at 603–04 (citing *Hewitt v. Helms*, 482 U.S. 755, 760 (1987)).

172. *Id.* at 603–04 (citing *Hanrahan v. Hampton*, 446 U.S. 754, 758 (1980); *Hewitt*, 482 U.S. at 760).

173. *Lefemine v. Wideman*, 133 S. Ct. 9, 11 (2012) (citing *Farrar v. Hobby*, 506 U.S. 103, 111 (1992)).

174. *Id.*

175. *Buckhannon*, 532 U.S. at 605–06 (citations omitted).

176. S. REP. NO. 110-59, at 6 (2007). *See also* OPEN Government Act of 2007, Pub. L. No. 110-175 § 4(a)(2), 121 Stat. 2524, 2525 (2007) (codified at 5 U.S.C. § 552(a)(4)(E)(ii)(II) (2012)) (allowing for recovery of attorney's fees).

Here, if the veteran can show success on any significant claim affording him some of the relief sought and a unilateral change in position by the Boards, then his attorney could collect fees from the government.¹⁷⁷ A whole new window of litigation would open to lawyers and veterans across the country.¹⁷⁸ Increased opportunities for litigation would also intensify pressure upon the Boards to properly and efficiently address veterans’ discharge upgrade petitions.¹⁷⁹ Thus, the United States Code should be amended to include a specific provision allowing for a prevailing veteran to recoup attorneys’ fees.

D. Utilize Existing Veterans Treatment Courts in South Carolina

In November 2011, the Fifth Judicial Circuit of South Carolina created the state’s first Veterans Treatment Court program to divert veterans away from the criminal justice system and assist them with rehabilitation through mentorship and counseling.¹⁸⁰ Veterans who have committed non-violent crimes, present a diagnosis of treatable behavioral or mental illness, and are eligible for veterans’ services benefits may be eligible for the program.¹⁸¹ Operating like a Drug or Mental Health court program, the Solicitor’s Office reviews and recommends potential cases to the Veterans Court judge who then has the sole power to grant admission of a veteran’s case.¹⁸² Since the program’s goals are similarly aligned towards rehabilitating veterans suffering from homelessness, substance abuse, and mental illness, efficiency and fairness beg the use of resources and mentors already in place to

177. 5 U.S.C. § 552(a)(4)(E)(ii) (2012).

178. Joshua Apfelroth, *The Open Government Act: A Proposed Bill to Ensure the Efficient Implementation of the Freedom of Information Act*, 58 ADMIN. L. REV. 219, 227–29 (2006) (highlighting the hurdles to veteran litigation that the OPEN Government Act helps to eliminate).

179. Cf., Paul Jennings, *The Battle After War: Why Disabled Texas Veterans are Fighting for the Military Retirement They Deserve*, 17 TEX. TECH. ADMIN. L.J. 153, 165–66 (2015) (discussing inadequacies in BCMR review of discharge upgrade claims).

180. See *Veterans Court Program*, FIFTH JUDICIAL CIRCUIT SOLICITOR’S OFFICE, <http://scsolicitor5.org/GeneralSessionsCourt/VeteransCourtProgram.aspx> (last visited Jan. 10, 2016); see also A280, 120th Sess. (S.C. 2013) (enacting the “Veterans Treatment Court Program Act and authorizing circuit court solicitors to establish veterans treatment court programs to divert qualifying nonviolent military veteran offenders away from the criminal justice system and into appropriate treatment programs).

181. *Id.*

182. *Id.*

alleviate the administrative burdens on BCMRs presented by the discharge upgrade process.¹⁸³

As of June 30, 2014, 220 Veterans Treatment Courts (“VTCs”) are active in thirty-six states.¹⁸⁴ The South Carolina legislature recently passed Act No. 280, which enacted the Veterans Treatment Court Program and authorized circuit solicitors to establish treatment court programs in the state.¹⁸⁵ The extension of BCMR jurisdiction over discharge upgrade review into Veterans Treatment Courts would facilitate in-person hearings since VTCs are now rapidly spreading across the country.¹⁸⁶ As mentioned before, to qualify for BCMR membership by regulation, members must be high-ranking civilians in the executive part of their military branch.¹⁸⁷ Similarly, the Chief Justice of the state’s Supreme Court may stipulate that Veterans Court judges be selected from a group of specially-qualified military veterans. These VTCs could help to close the gap in the aforementioned “critical transition” veterans undergo between the Department of Defense and VA.¹⁸⁸

In fact, this is not an entirely new concept. In 1977, under the direction of President Jimmy Carter, Congress enacted Public Law 95-126 to establish a new review procedure: the “Department of Defense Discharge Review Program (Special).” The program was created to provide benefit entitlement

183. *See id.* (explaining that the purpose of veteran mentors is to ensure that every veteran receives the assistance and services needed).

184. *The History*, JUSTICE FOR VETS, <http://justiceforvets.org/vtc-history> (last visited Jan. 10, 2016). Judge Robert Russell in Buffalo, NY created the first Veterans Treatment Court in 2008 when he noticed the particularly large number of veterans appearing on his dockets for Drug Court and Mental Health Court. *Id.* He observed firsthand that veterans benefited from the interdisciplinary approach and the military camaraderie with veterans on his staff and wanted to focus a new docket exclusively on veterans’ needs. *Id.* Eventually, Judge Russell partnered with his local U.S. Department of Veterans Affairs Medical Center to source volunteer veterans for mentorship. *Id.* Today, the Veterans Health Administration, Veterans Benefit Administration, State Departments of Veterans Affairs, and numerous veterans groups are involved in the program. *Id.*

185. A280, 120th Sess. (S.C. 2013). *See also* John Furman Wall, IV, *The Veterans Treatment Court Program Act: South Carolina’s Opportunity to Provide Services for Those Who Have Served*, 65 S.C. L. REV. 879 (2014) (further supporting the institution of the Veterans Treatment Court programs in South Carolina).

186. *But see* Paul Jennings, *The Battle After War: Why Disabled Texas Veterans are Fighting for the Military Retirement They Deserve*, 17 TEX. TECH. ADMIN. L.J. 153, 165–66 (2015) (discussing criticism of BCMRs for often basing their decisions only on the record before them since Boards do not have to grant in-person evidentiary hearings).

187. 32 C.F.R. § 581.3(c)(1) (2016); 32 C.F.R. § 723.2(a) (2016); 32 C.F.R. § 865.1 (2016); 33 C.F.R. § 52.11 (2016).

188. Proposition derived from the way judges are selected for the BCMR in accord with 32 C.F.R. §§ 581.3(c)(1), 723.2(a), 865.1; 33 C.F.R. § 52.11 (2012).

for veterans with other than honorable discharges who could present evidence of “compelling circumstances” to warrant or explain misconduct that led to their discharge.¹⁸⁹ However, the Army Discharge Review Board was not required to affirm a favorable determination by the Special program because of a timing prohibition in 38 U.S.C. § 3103(e).¹⁹⁰ Thus, Title 38 of the United States Code would need to be properly amended to allow for a VTC’s retroactive review of discharges and to grant VTC’s the power to bind the Boards and the VA by a VTC’s decision.

VIII. CONCLUSION

A look at growing cultural trends across the country in support of American veterans and their unique needs makes many optimistic that even if government programs fail, civilians will ensure that past and future veterans are truly cared for.¹⁹¹ The Good News Network reports that in November 2015, Virginia became the first state to have certifiably ended homelessness among veterans; in August of 2015, Connecticut became the first state to end “chronic homelessness” among veterans.¹⁹² As part of the U.S. Department of Housing and Urban Development’s 2015 “Mayors Challenge” initiative, First Lady Michelle Obama called American mayors to action to end veteran homelessness across the country.¹⁹³ So far, more than 850 civic leaders have pledged to join the challenge.¹⁹⁴ The cities of Las Vegas, Syracuse, and Schenectady have all ended homelessness among veterans as well.¹⁹⁵

According to the VA, the number of legal clinics for veterans in law schools is growing with at least twenty-nine clinics across the country, including Yale Law School, UC Berkeley School of Law, George Mason

189. *Demo v. United States*, 3 Cl. Ct. 349 (1983).

190. *Id.* (citing 38 U.S.C. § 3103(e) (2015)); see also *Vietnam Veterans Against the War, Carter’s Discharge Not Enough*, 7 THE VETERAN 8, 8, June 1977, <http://www.vvaw.org/veteran/article/?id=1663>.

191. See *A Hero’s Welcome: The American Public and Attitudes Toward Veterans*, CORNELL UNIVERSITY, <http://ropercenter.cornell.edu/a-heros-welcome-the-american-public-and-attitudes-toward-veterans/> (last visited Oct. 18, 2016) (arguing that there is a strong support for veterans and a willingness to provide them with government assistance).

192. *Veteran Homelessness Has Been Ended in Virginia, First State to Do It*, GOOD NEWS NETWORK, <http://www.goodnewsnetwork.org/veteran-homelessness-has-been-ended-in-virginia/> (last visited Jan. 10, 2016).

193. *Mayors Challenge: Mayors and Staff*, HUD.GOV, http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/veteran_information/mayors_challenge/mayors_and_staff (last visited Jan. 10, 2016).

194. *Veteran Homelessness*, *supra* note 192.

195. *Id.*

School of Law, Harvard Law School, Arizona Law, John Marshall Law School, North Carolina Central University School of Law and William & Mary Law School.¹⁹⁶ In 2014, South Carolina Appleseed Legal Justice Center, with William Jennings Bryan Dorn VA Medical Center and Nelson Mullins Riley & Scarborough Law Firm launched “Lawyers 4 Vets,” a pro bono legal clinic for low-income South Carolina veterans.¹⁹⁷ More than 420,000 veterans presently live in South Carolina, and an estimated 30,000 are living below the poverty line.¹⁹⁸ The Lawyers 4 Vets program helps match pro bono attorneys to veterans in desperate need of legal representation.¹⁹⁹

Perhaps the most important next step in protecting past and future American soldiers who suffer from PTSD is to hold the Department of Defense and the VA accountable for reaching out to veterans when they return home from deployment and continuing to monitor their progress for the years to come.²⁰⁰ While many veterans wait for decisions from the BCMRs, even more are ignorant of the help that is potentially available to them.²⁰¹ For many veterans suffering from combat wounds like PTSD, two things are constant: their devotion to our freedom and the traumatic flashbacks of life at its worst.²⁰² As a nation, we must not waver in our gratitude to veterans for the former and our resolve to help them rediscover peace beyond the latter. While it is impossible to fully restore these veterans or recover their time lost, these proposed administrative remedies and the continued awareness of veterans’ sacrifices are steps in the right direction.

196. *Law School Clinical Programs Serving Veterans*, U.S. DEP’T OF VETERANS AFFAIRS, http://www.va.gov/OGC/docs/Vet_Law_Forum_Veterans_Law_School_Clinics.pptx, (last visited Jan. 10, 2016).

197. *Lawyers 4 Vets Free Clinic Launching*, NELSON MULLINS RILEY & SCARBOROUGH, LLP, <http://www.nelsonmullins.com/articles/lawyers4vets> (last visited Jan. 10, 2016).

198. *Id.*

199. *Id.*

200. *See Reform Government for Today’s Veterans*, IAVA, <http://iava.org/reform-government-for-todays-veterans-iava-recommendations/> (last visited Oct. 18, 2016) (noting that the VA and Department of Defense often fail to meet veteran needs so reform is needed).

201. *Correcting “Bad Paper” Discharges for Combat Veterans with PTSD*, COLLINS ATTORNEYS, <http://www.collinsattorneys.com/veteransblawg/correcting-bad-paper-discharges/> (last visited Oct. 18, 2016).

202. *See Symptoms of PTSD*, U.S. DEP’T OF VETERANS AFFAIRS, http://www.ptsd.va.gov/public/PTSD-overview/basics/symptoms_of_ptsd.asp (last visited Oct. 18, 2016) (outlining the symptoms of PTSD, including flashbacks).